GOH SWEE OH & ORS

v.

HENG JI KENG & ANOR

HIGH COURT MALAYA, KUALA LUMPUR
VARGHESE GEORGE JC
[NOTICE OF MOTIONS NOS: D9(D6)-25-7-2007
& D3-28-168-2003]
10 DECEMBER 2010

COMPANY LAW: *Winding up - Liquidator - Application by liquidators to ratify legal costs paid from available funds of company - Whether payment outside the scope of liquidators' duties - Whether payment tainted with illegality or 'collusion' to cause depletion of available funds - Whether payments to be upheld*

COMPANY LAW: *Winding up - Liquidator - Legal proceedings - Court proceedings involving company in liquidation - Whether liquidators could intervene in proceedings if interests of company or their position as liquidator is called into question - Whether liquidators' right to intervene restricted to proceedings 'in the name and on behalf of' the company*

COMPANY LAW: *Winding up - Liquidator - Remuneration - Companies Act 1965, s. 232(3)(c) - Companies (Winding Up) Rules 1972, r. 142(3) - Application for ratification of liquidator's remuneration - Whether liquidator must first seek court's approval before being paid remuneration from available funds of company under liquidation - Whether shareholder entitled to be heard on the application - Whether shareholders' grievances over liquidator's remuneration could be heard and determined under s. 305 of Companies Act 1965 - Whether liquidators' claim for disbursements and remuneration to be allowed*

The company in liquidation, one Fokas Perkasa Sdn Bhd, was ordered to be wound up by the court on 11 March 2004 on the petition presented by one Serampai Istimewa Sdn Bhd. The court appointed one Mr. Heng and one Mr. Monteiro jointly and severally as Liquidators of the company. The present proceedings was brought by three shareholders/contributories of the company against Mr. Heng and Mr. Monteiro for declarations that three items of payments made by them in their capacity as liquidator were not lawful and that they should be made personally accountable to repay those sums to the funds of the company. The liquidators on the other hand applied to ratify the three items

of payments and for approval of the court to make one other additional payment. The payments in contention as between the parties were: (a) Mr. Heng and Mr. Monteiro's remuneration as Liquidator in the sum of RM93,937.95 which had already been paid out from available funds of the company; (b) the cost of the winding-up petition awarded to the petitioner in the sum of RM65,000, which had been paid to one Mr. Lum, a Director then of Serampai Istimewa Sdn Bhd (the petitioner); and (c) Legal costs incurred by the Liquidator totalling a sum of RM66,420 paid to the following legal firms – Messrs. Lee Swee Seng & Co., Messrs. HL Teh & Associates, and Messrs. Wan Ewe Chong & Khoo. The 'payment' which had yet to be effected but for which approval was being sought was cost and expenses in the sum of RM34,818 outstanding and due to another legal firm, Messrs. Lai & Associates. The liquidators raised a preliminary question as to the competency of the shareholders/contributories to bring proceedings to challenge the liquidator's remuneration.

Held:

(1) In an application brought pursuant to s. 232(3)(c) of the Companies Act 1965 ('the Act'), a shareholder is not entitled to bring or be heard on an issue related to remuneration of a liquidator. However, since the court was simultaneously disposing the application brought by the shareholders in suit D6-25-7-2007, the shareholders could pursuant to s. 305 of the Act, seek to have their grievances in respect of the 'remuneration' of the liquidator be also determined by the court *ie*, overriding the limitation on shareholders under s. 232(3)(c). (para 7)

(2) It would make no sense at all to impose a condition that the private liquidator appointed by the court to take charge of a winding-up process, must in all instances approach the court first for approval before being paid remuneration from available funds of the company under liquidation. In similar vein, there is no condition imposed anywhere for approval to be obtained for all expenses and disbursements before it being incurred. If such a condition were to be read into the provisions, it would mean delay, additional work and expenses to be incurred by the liquidator and that could not have been the intention of the legislature in regulating the liquidation process. There are

sufficient safeguards in the statutes, including for shareholders (s. 305), to check the liquidator in so far as the issue of reasonableness of their remuneration and expenses are concerned or generally their conduct in that capacity. (para 8)

(3) Customarily, in professional practice, all disbursements are reimbursable; some may be supported by receipts, but normally such reimbursables would follow charges fixed by the practice, like for instance, mileage claims of different category of staff/officers, photocopying charges etc. As regards, the remuneration charged, the summary of work provided did not appear to be outside the scope of normal liquidator's duties and functions and given the time span Mr. Heng and Mr. Monteiro were in office, there was nothing exceptional or untoward to substantiate any grounds at all to strike down the same. Hence, the appropriation of the said sum of RM93,937.95 by Mr. Heng and Mr. Monteiro was approved and/or ratified. (para 10)

(4) The 'shareholders' had the burden to show that the sum of RM65,000 that had been paid out as 'agreed cost' to Mr. Lum was outside the scope of the liquidators' duties and was one tainted with illegality or 'collusion' to cause a depletion of the available proceeds of the company in liquidation. There was no such evidence. (paras 11 & 12)

(5) The sums paid to Messrs Lee Swee Seng & Co. (RM5,507) and to Messrs. Wan Ewe Chung & Khoo (RM6,800) were in respect of opinions rendered by the said firms to Mr. Heng and Mr. Monteiro. There were no reasons why these payments should not be upheld. The sum paid out to Messrs. H.L. Teh and Associates (RM54,113) and the sum of RM34,818 yet to be paid to Messrs Lai & Associates (for which approval was being sought by Mr. Heng and Mr. Monteiro here) both related to a court proceedings which involved a stay application brought by the shareholders themselves in respect of the order of the court to wind-up Fokas Perkasa. Mr. Heng and Mr. Monteiro had legitimate concerns not just about the progress of the winding-up process but also because there were serious allegations made personally against Mr. Heng and Mr. Monteiro. The liquidator is not restricted by s. 236(2) but can intervene or include

A themselves if the interests of the company being wound-up or their position as liquidator of the company is called into question in court proceedings. It is not restricted to proceedings 'in the name and on behalf of' the company. (paras 12 & 13)

B **Case(s) referred to:**
Perumahan NCK Sdn Bhd v. Mega Sakti Sdn Bhd (No 2) [2005] 7 CLJ 370 HC ***(refd)***
Re Bridal Central Co Pte Ltd [1985] 9 ACLR 481 ***(refd)***

C **Legislation referred to:**
Companies Act 1965, ss. 232(3)(a), (b), (c), (4), (5), 236(2)(j), 305(1)
Companies (Winding-Up) Rules 1972, r. 142(3)

(Notice of Motion No: D9(D6)-25-7-2007)
For the applicant - SY Lee; M/s ST Lee & Partners
D *For the respondent - Leonard Yeoh (MF Lim with him); M/s Tay & Partners*

(Notice of Motion No: D3-28-168-2003)
For the applicant/liquidator - Leonard Yeoh (MF Lim with him); M/s Tay & Partners
E *For the contributories/shareholders - SY Lee; M/s ST Lee & Partners*

For the Official Receiver - Current Liquidator - Paramaspary Anjunan

Reported by Amutha Suppayah

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JUDGMENT

Varghese George JC:

G **[1]** The hearing before me involved two separate diametrically opposed applications which arose from two separate proceedings filed in court but which were commonly related to the liquidation of the same company. The applications centered around common issues of law and of facts and hence it was by consent heard together for purposes of expediency.

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[2] The company in liquidation was one Fokas Perkasa Sdn Bhd ordered to be wound up by the court on 11 March 2004 in KL High Court Companies (Winding-Up) No: D3-28-168-2003 on the petition presented by one Serampai Istimewa Sdn Bhd. The I official receiver had been initially appointed by court to be liquidator of the company. However on 21 July 2004 the court proceeded to appoint:

(i) Mr. Heng J, Leng (Mr. Heng) and

(ii) Mr. Michael Joseph Monteiro (Mr. Monteiro)

jointly and severally to replace the official receiver as liquidator of the said company.

[3] This particular proceedings, Notis Usul D6-25-7-2007, was an action brought by three shareholders/contributories of the said company against Mr. Heng and Mr. Monteiro for declarations that three items of payments made by them in their capacity as liquidator were not lawful and that they should be made personally accountable to repay those sums to the funds of the company under liquidation.

[4] On the other hand, encl. 59 in Companies (Winding-Up) No. D3-28-168-2003 was an application by Mr. Heng and Mr. Monteiro to ratify the three items of payments referred above and further, for approval of this court to make one other additional payment.

[5] Mr. Heng and Mr. Monteiro had subsequent to their appointment on 4 November 2009 obtained an order of court to accept their resignation as the liquidator of the company and for the official receiver to be (re) appointed in their place.

[6] The payments paid out from the funds of the company in liquidation, in contention as between the parties were:

(a) Mr. Heng and Mr. Monteiro's remuneration as liquidator in the sum of RM93,937.95 which had already been effected and paid out from available funds of the company.

(b) The cost of the winding-up petition awarded to the petitioner in the sum of RM65,000, which had been paid to one Mr. Lum Wai Num (Mr. Lum), a Director then of Serampai Istimewa Sdn Bhd (the petitioner).

(c) Legal costs incurred by the liquidator totalling a sum of RM66,420 paid to the following legal firms,

(i) Messrs. Lee Swee Seng & Co.,

(ii) Messrs. HL Teh & Associates, and

(iii) Messrs. Wan Ewe Chong & Khoo,

A [6.1] The 'payment' which had yet to be effected but for which approval was being sought (in encl. 59) by Mr. Heng and Mr. Monteiro was:

(d) Cost and expenses in the sum of RM34,818 outstanding
B and due to another legal firm, Messrs. Lai & Associates.

[7] In respect of the issue pertaining to the remuneration of the liquidator counsel for Mr. Heng and Mr Monteiro raised the preliminary question as to the competency of the shareholder/
C contributories to bring proceedings in respect of this matter or to challenge the liquidator's remuneration. Counsel referred to the decision in *Perumahan NCK Sdn Bhd v. Mega Sakti Sdn Bhd (No. 2)* [2005] 7 CLJ 370 and highlighted that Mr. Heng and Mr. Monteiro's application was being brought pursuant to s. 232(3)(c)
D of the Companies Act 1965, (the Act). Section 232(3) of the Act reads:

232. …

(3) A liquidator other than the Official Receiver shall be entitled
E to receive such salary or remuneration by way of percentage or otherwise as is determined:

(a) by agreement between the liquidator and the committee of inspection, if any;

F (b) failing such agreement or where there is no committee of inspection by a resolution passed at a meeting of creditors by a majority of not less than three-fourths in value and one-half in number of the creditors present in person or by proxy and voting at the meeting and whose debts have been admitted to vote, which meeting shall be convened by the
G liquidator by a notice to each creditor to which notice shall be attached a statement of all receipts and expenditure by the liquidator and the amount of remuneration sought by him; or

(c) failing a determination in a manner referred to in paragraph (a) or (b), by the Court.

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Section 232(4) and s. 232(5) are also reproduced here as they are relevant as well as would be referred later in this judgment:

(4) Where the salary or remuneration of a liquidator is determined
I in the manner specified in paragraph (3)(a) the Court may, on the application of a member or members whose shareholding or shareholdings represents or represent in the aggregate not less than ten per centum of the issued capital of the company, confirm or vary the determination.

(5) Where the salary or remuneration of a liquidator is determined in the manner specified in paragraph (3)(b) the Court may, on the application of the liquidator or a member or members referred to in subsection (4), confirm or vary the determination.

In *Perumahan NCK Sdn Bhd*, Ramly Ali, J (as he then was) made the following observations:

It is clear that under s. 232(3) of the Companies Act, 1965 and r. 142(3) of the Companies (Winding-Up) Rules 1972, liquidators are entitled to be paid remuneration for their works done on behalf of the Court and the Court has jurisdiction to determine the liquidators remuneration.

...

From express wording of s. 233 *(sic)* of the Companies Act, 1965, the only parties that can be represented at the fixing of the remuneration are liquidators and the creditors. The director of the respondent company has no right at all to participate or to be heard as such on any application to the Court for fixing of the liquidator's remuneration. Shareholders, however are provided with a right to apply to Court to vary or confirm the remuneration which has been fixed by agreement with the committee of inspection by virtue of subsection (4) of s. 232, ...

[7.1] The response of the shareholders, that is, the applicants in Notis Usul D6-25-7-2007, was that they had an overriding right pursuant to s. 305 of the Act to question the remuneration of the liquidator, which in this case had been appropriated to themselves by Mr. Heng and Mr. Monteiro. This they say, they were entitled to do by way of separate proceedings, as is being pursued now in this notis usul.

Section 305(1) of the Act, in turn reads:

305. Power of Court to assess damages against delinquent officers, etc.

(1) If in the course of winding up it appears that any person who has taken part in the formation of the company or any past or present liquidator or officer has misapplied or retained or become liable or accountable for any money or property of the company or been guilty of any misfeasance or breach of trust or duty in relation to the company, **the Court may on the application of the liquidator or of any creditor or contributory examine into the conduct of that person,** liquidator or officer and

A compel him to repay or restore the money or property or any part thereof with interest at such rate as the Court thinks just, or to contribute such sum to the assets of the company by way of compensation in respect of the misapplication, retainer, misfeasance or breach of trust or duty as the Court thinks just.

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7.2 In the event, I agreed with Ramly J's reading of s. 232(3), (4) and (5) as above, that in an application brought pursuant to s. 232(3)(c) of the Act, a shareholder was not entitled to bring or be heard on an issue related to remuneration of a liquidator. The intention of the legislature is clearly discernable since the right of intervention in such matters is restricted, in so far as a shareholder is concerned, to issues arising in circumstances under;

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(i) Section 232(3)(a) pursuant to s. 232(4), and,

(ii) Section 232(3)(b) pursuant to s. 232(5), of the Act.

Notwithstanding the same, as I was also simultaneously disposing the application brought by the shareholders here in D6-25-7-2007, I agreed with counsel for the shareholders that her clients, could pursuant to s. 305 of the Act, seek to have their grievances in respect of the 'remuneration' of the liquidator be also determined by the court that is, overriding the limitation on shareholders that is obvious from a reading of s. 232(3)(c).

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[8] Having ruled accordingly, I considered the complaint of the shareholders, which was that Mr. Heng and Mr. Monteiro had already paid to themselves the sum of RM95,937.905 as liquidator's remuneration for the year 2005 without obtaining prior approval to do so under s. 232(a) or (b) or (c). The fact that no prior approval was obtained is not in dispute here.

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[8.1] Counsel for the shareholders contend that the court did not have the jurisdiction to now 'approve' a payment already made to themselves by Mr. Heng and Mr. Monteiro. In other words, it was argued that this court could not retrospectively give approval for such a payment of remuneration. Further it was pointed out that this application for ratification was only in any event being brought by Mr. Heng and Mr. Monteiro (in D3-28-168-2003) some two years after the event.

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[8.2] Counsel for Mr. Heng and Mr. Monteiro however referred to me the decision in *Re Bridal Central Co. Pte. Ltd* [1985] 9 ACLR 481 as authority for their position that a liquidator was entitled not only to be paid a remuneration but they were entitled to pay themselves the same and seek the ratification of the court for such payment. *Re Bridal Central*, was cited with approval in *Perumahan NCK* and Ramly Ali, J (as he then was) went ahead in our local case there to ratify amounts already appropriated previously by a liquidator to account of their remuneration.

[8.3] It was clear, as was pointed out further to me, that even where there was no committee of inspection in place (as was the case here), by r. 142(3) of the Companies (Winding-Up) Rules 1972, a liquidator was always entitled to remuneration, which, unless ordered otherwise by the court, would follow the scale of fees and percentages for the time being payable to official receiver discharging duties as a liquidator.

Here too there was no requirement that 'prior approval' had to be secured first. It could therefore only mean, firstly, that a private liquidator is entitled to be paid remuneration, and, secondly, that such entitlement or payment is not subject to any prior approval of the court before it is availed of by the liquidator.

[8.4] To me, in a situation where there is no Committee of Inspection in place (to fix remuneration of a liquidator), it would make no sense at all to impose a condition that the private liquidator appointed by the court to take charge of a winding-up process, must in all instances approach the court first for approval before being paid remuneration from available funds of the company under liquidation. In similar vein, there is no condition imposed anywhere for approval to be obtained for all expenses and disbursements before it being incurred.

If such a condition were to be read into the provisions (where there is none), it would no doubt mean delay, additional work and expenses to be incurred by the liquidator and that could not have been the intention of the legislature in regulating the liquidation process.

A [8.5] A distinction has to be drawn between:

(i) attending to and effecting payments that are necessary and incidental to the winding-up or liquidation work at hand and,

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(ii) the reasonableness of the amounts incurred, appropriated or paid out.

There are sufficient safeguards in the statutes, including for shareholders (s. 305), to check the liquidator in so far as the latter issue of reasonableness of their remuneration and expenses are concerned or generally their conduct in that capacity.

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[8.6] I therefore did not accept the contention of the shareholders that Mr. Heng and Mr. Monteiro had to get prior approval of the court in this case and that they could not apply retrospectively for approval or ratification of sums paid or appropriated as liquidator's remuneration. There was no authority referred to me in any case which contradicted the decision upholding ratification in *Perumahan NCK*.

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[9] Having disposed the two over-arching issues to the effect as stated in paras. 7 and 8 of this grounds of decision, I then considered the issues related whether the payments were justified, and if so, the reasonableness of the related separate quantum involved, in each of the four heads or items of 'payment' by the liquidator which was in contention between the parties as identified in para. 6.1 of this grounds of decision.

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G **[10]** The first item in contention was the total sum of RM93,937.95 which Mr. Heng and Mr. Monteiro had paid out to themselves from the funds with them as liquidator of Fokas Perkasa under liquidation. This sum was constituted of RM85,000 as fees and RM8,937.95 as disbursements incurred by the liquidator in discharging the duties of that office. As explained by counsel for the Mr. Heng and Mr. Monteiro, the fees charged was only for attendances up to 30 June 2006, in any case, although Mr. Heng and Mr. Monteiro, jointly and severally was the liquidator for the period for 2004 to 2009 (ie, when they were formally allowed to resign by the court).

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For purposes of comparison, Mr. Heng and Mr. Monteiro produced and I had for reference, a working of fees due to them if it was charged on a time-cost basis and this exceeded the sum of RM300,000 for all the related attendances, including court proceedings in respect of this liquidation.

[10.1] The shareholders' argument was that the fees of RM85,000 was unreasonable in all the circumstances and further that there were no supporting invoices or receipts in respect of the sum denoted as 'disbursements' incurred by Mr. Heng and Mr. Monteiro.

[10.2] I did not find any merit in the stand of the shareholders. Customarily, in professional practice, all disbursements are reimbursable; some may be supported by receipts, but normally such reimbursables would follow charges fixed by the practice, like for instance, mileage claims of different category of staff/officers, photocopying charges etc. In our case, an explanation was forthcoming as to the somewhat large sum incurred as photocopying charges, namely, that upon taking over as liquidator, Mr. Heng and Mr. Monteiro had to make copies of voluminous documents of the company as a matter of course and of necessity.

As regards, the remuneration charged, the summary of work provided did not appear to me to be outside the scope of normal liquidator's duties and functions and given the time span Mr. Heng and Mr. Monteiro were in office, I did not find anything exceptional or untoward to substantiate any grounds at all to strike down the same.

[10.3] I was therefore satisfied that the appropriation of the said sum of RM93,937.95 by Mr. Heng and Mr. Monteiro should be approved and/or ratified as prayed for in encl. 59 in Companies (Winding-Up) No. D3-28-168-2003.

[11] The second item in dispute was a sum of RM65,000 that had been paid out by Mr. Heng and Mr. Monteiro as 'agreed cost' to Mr. Lum, a Director of Serampai Istimewa Sdn Bhd, the Petitioner, in respect of the proceedings, Companies (Winding-Up) No. D3-28-168-2003.

A [11.1] The thrust of the shareholders' attack was that there was some 'hanky-panky' between Mr. Heng and Mr. Monteiro, on the one side and Mr. Lum on the other, in the payment of cost for the winding-up petition being not paid (as is usual) to the petitioner's company or its
B solicitors, but in this case to Mr. Lum instead. Counsel for the shareholders submitted that the original order of court in respect of costs of the petition was for it 'to be taxed' but this part of the order had been amended to 'agreed sum *in lieu* of taxation' with the Mr. Heng and
C Mr. Monteiro agreeing to it.

It was also part of their complaint that the cheque for payment was dated 13 January 2005, ie, one day before the order of court was varied as aforesaid and also before
D the liquidator had formally agreed to the sum of RM65,000 *in lieu* of taxation which was only on 17 January 2005. The nub of the complaint was that the 'costs' paid out of the monies of the company under liquidation ended up in the hands of Mr. Lum and not
E Serampai Istimewa or their solicitors. The shareholders wanted this court to infer from the above scenario that this payment was 'irregular' or 'tainted' and Mr. Heng and Mr. Monteiro ought to be made personally liable to repay that sum to the company under liquidation.

F [11.2] It was, on the other hand, pointed out by counsel for Mr. Heng and Mr. Monteiro that:

(i) The negotiations to vary the winding-up order of court in respect of the costs of the petition to read
G '*in lieu* of taxation' was between solicitors for Serampai Istimewa and the liquidator and not between Mr. Lum and the liquidator,

(ii) Serampai Istimewa had the authority to direct how
H the payment of 'cost' should be made and had in fact issued a letter of authority to the liquidator to effect payment of the agreed costs of RM65,000 directly to Mr. Lum who was a Director/Shareholder of the company,

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(iii) To settle 'costs' of the winding-up petition was a necessary item of expenses of the company under liquidation as ordered by the court and to the present Serampai Istimewa (the petitioner) or for that matter any other person interested has not brought any conflicting claim for that costs,

(iv) The cheque might have been dated earlier (in the light of negotiations leading up to the variation to the court order by consent) but there was no evidence shown as to when it was released or banked in to provide the court with any grounds to draw an adverse conclusion against Mr. Heng and Mr. Monteiro. It was urged on me that general doubts cannot equate to fraud and I should therefore reject the shareholders accusations.

11.3 On a balance, I agreed with counsel for Mr. Heng and Mr. Monteiro. The 'shareholders' had the burden to show that this payment was outside the scope of the liquidators' duties and was one tainted with illegality or 'collusion' to cause a depletion of the available proceeds of the company in liquidation. I found no such evidence. The shareholders had not discharged the burden on them as aforesaid to strike down this payment and to make Mr. Heng and Mr. Monteiro, personally liable for the amount involved.

[12] The third area in contention between the parties was in respect of legal costs paid by the liquidator to three firms of solicitors, totalling in a sum of RM66,420.

[12.1] The sums paid to Messrs Lee Swee Seng & Co. (RM5,507) and to Messrs. Wan Ewe Chung & Khoo (RM6,800) were in respect of opinions rendered by the said firms to Mr. Heng and Mr. Monteiro. I failed to find any reasons why these payments should not be upheld. The shareholder's argument that more details of the legal work undertaken were required, was totally unmeritorious.

A [12.3] The sum paid out to Messrs. H.L. Teh and Associates (RM54,113) and the sum of RM34,818 yet to be paid to Messrs Lai & Associates (for which approval was being sought by Mr. Heng and Mr. Monteiro here) both relate to a court
B proceedings under reference D23-25-14-2004. This is best dealt with therefore together with the fourth area of dispute.

[13] The fourth area of dispute between the parties was in
C respect of the sum of RM34,818 due and payable to Messrs. Lai & Associates. Mr. Heng and Mr. Monteiro sought approval for release of this sum (since handed over to the official receiver) to that firm of solicitors but this was opposed by the shareholders.

D [13.1] As stated above, both this sum to be paid and the sum already paid Messrs. H L Teh & Associates, were fees payable to the respective solicitors for work related to proceedings D23-25-14-2004. It was not in dispute that the proceeding involved a stay
E application brought by the shareholders themselves in respect of the order of the court to wind-up Fokas Perkasa.

[13.2] In opposing the ratification of the sums paid to Messrs. H L Teh & Associates and the approval
F sought to pay Messrs. Lai & Associates, the shareholders contended that the liquidator should not have involved themselves in the proceedings. They argued that it was merely a proceeding between the shareholders and the petitioner
G (Serampai Istimewa). The liquidator (Mr. Heng and Mr. Monteiro) should not have involved themselves at all as it was not an action "for Fokas Perkasa, or in defending Fokas Perkara". Counsel for the shareholders referred to s. 236(2) and argued that
H the liquidator was not a party named in the proceeding for such payment to be recognized as necessary and consequently ratified or approved at all.

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[13.3] However as highlighted by counsel for Mr. Heng and Mr. Monteiro, the stay application was in respect of the winding-up of Fokas Perkasa of which Mr. Heng and Mr. Monteiro were jointly and severally the liquidator. They had stepped into the shoes of the Directors of the Company once the winding up order was granted. The liquidator had legitimate concerns not just about the progress of the winding-up process but also because there were serious allegations made personally against Mr. Heng and Mr. Monteiro. They had to defend themselves in that capacity and the liquidator was therefore a necessary party since they were liable to be sued for monies unless all relevant facts were adequately set before the court. They had to file affidavits as liquidator of the company as a matter of course in that proceeding.

(Incidentally the said stay application of the shareholders was dismissed at the High Court stage and the appeal by the shareholders thereform to the Court of Appeal was also unsuccessful.)

[13.4] The material parts of s. 236(2) are as follows:

236(2) The liquidator may:

(a) bring or defend any action or other legal proceeding in the name and on behalf of the company;

...

...

(d) do all acts and execute in the name and on behalf of the company all deeds, receipts and other than documents and for that purpose use when necessary the company's seal;

...

...

...

(i) appoint an agent to do any business which the liquidator is unable to do himself; and

(j) do all such other things as are necessary for winding up the affairs of the company and distributing its assets.

[13.5] I agreed with counsel for Mr. Heng and Mr. Monteiro that the liquidator was not restricted by s. 236(2) but could intervene or include themselves if the interests of the company being wound-up or their position as liquidator of the company is called into question in court proceedings. It was not restricted to proceedings 'in the name and on behalf of' the company.

This is adequately supported by the words of s. 236(2)(j) which is wide in scope to encompass situations where the liquidator is not necessarily a named party but the intervention of the liquidator is nevertheless necessary, particularly in the context of the liquidator's duty to adequately protect the rights of creditors generally, to ensure that the value of the realizable assets of the company being wound-up is not depleted or the process of liquidation delayed.

In this case there was the further element of the liquidator's conduct being challenged by the applicants for the stay, who were the very same shareholders now opposing the legitimate legal expenses incurred by the liquidator.

[14] Accordingly, I allowed encl. 59 in proceedings D3-28-168-2003 as follows:

(i) The appropriation of the sum of RM93,937.95 by Mr. Heng and Mr. Monteiro as their remuneration and disbursements during their term of office as liquidator was approved and/or ratified,

(ii) The sum of RM66,420 paid as legal costs between 12 July 2004 to 18 August 2005 by Mr. Heng and Mr. Monteiro was approved and/or ratified,

(iii) The cost of the winding-up petition ordered in favour of the petitioner and agreed subsequently to be RM65,000 *in lieu* of taxation and paid to Mr. Lum was approved and/or ratified,

(iv) The further legal fees of RM34,818 payable to Messrs. Lai & Associates, the sum whereof were presently in the hands of the official receiver, is approved for payment and the official receiver was directed to effect the same,

(v) There be no order as to costs by agreement of parties in respect of encl. 59 here.

[14.1] In the light of the order of this court as aforesaid in D28-168-2003 as aforesaid, encl. 5 in proceedings D25-7-2007, (ie, this proceeding) was dismissed with costs.

The agreed costs to be paid by applicants here (the shareholders) to Mr. Heng and Mr. Monteiro was fixed at RM20,000.